

REMARKS

The November 29, 2005 Office Action has been reviewed and its contents carefully noted. In the office action of November 29, 2005, claims 8 and 19 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 stands rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,020,883 to Herz et al. (“Herz”). Claims 1-5, 7-10, 12, 13 and 17 stand rejected under 35 U.S.C. 103 as unpatentable over U.S. Patent No. 6,772,209 to Chernock et al. (“Chernock”). Claim 6 stands rejected under 35 U.S.C. §103(a) as unpatentable over Chernock in view of U.S. Patent No. 5,740,549 to Reilly et. al (“Reilly”). Claims 11, 15 and 16 stand rejected under 35 U.S.C. §103(a) over Chernock in view of Herz. Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Chernock in view of U.S. Patent No. 6,049,892 to Casagrande et al. (“Casagrande”). Finally, Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Herz in view of Chernock.

In response to the Examiner’s rejections, Applicants have amended claims 1, 5-8, and 18-19. Claim 1 is amended to claim “said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period.” Support for this amendment is found at page 7, ll. 29-31 of the specification as filed. No new matter is being added.

Claim 5 is amended to claim “the next timings of transmitting conditions of the terminals to the server apparatus for the terminals at the time when said terminal communicate with said server apparatus and sets said next timings of transmitting conditions of the terminals”. Support for this amendment is found at page 7, ll. 29-31 of the specification as filed. No new matter is

being added.

Claim 6 is amended to claim “software download information, which indicates a software download to the terminal succeeds or not;” and further includes “the next timing of transmitting the condition information so that the instruction is defined in a manner that the timings for the terminal and other terminals to transmit the condition information to the server apparatus are distributed within a predetermined period.” Support for this amendment is found at page 7, ll. 29-31 and page 15, ll. 13-14 of the specification as filed. No new matter is being added.

Claim 7 is amended to claim a server apparatus “wherein the server apparatus defines the next timings of transmitting conditions of the terminals to the server apparatus for the terminals at the time when the terminal communicate with the server apparatus and sets the next timings to be distributed in a predetermined amount of time.” Support for this amendment is found at page 7, ll. 29-31 of the specification as filed. No new matter is being added.

Claim 8 is amended to claim “an operation condition maintaining section for maintaining an operation condition, associated with a predetermined operation, which is for executing the associated predetermined operation” and “an operation executing section for, when the determining section determines an operation condition is satisfied, fetching a predetermined operation, which is associated with the satisfied operation condition, and executing the fetched operation”. Support for these amendments is found at page 17, ll. 12-24 and page 18, l.20 – page 19, l.17 of the application as filed. No new matter is being added.

Claim 18 is amended so as add a “timing setting step” as follows: “a timing setting step of setting to each terminal at the condition information receiving step the next timings of transmitting condition information of the plurality of terminals so that the next timings of transmitting conditions is distributed in a predetermined period of time”. Support for this

amendment is found at page 7, ll. 29-31 of the application as filed. No new matter is being added.

Claim 19 is amended so as to define an operation executing step of “fetching an operation controlled in advance to execute the operation when the operation condition corresponding to the fetched operation is determined to be satisfied in the determining step meets the operation condition.” Support for these amendments is found at page 17, ll. 12-24 and page 18, l. 20 – page 19, l. 17 of the application as filed. No new matter is being added.

Claims 1-19 are presented for continued prosecution. Reconsideration of the application is respectfully requested.

Claim Rejections – 35 U.S.C. §112

I. Rejection of Claims 8 and 19 under 35 U.S.C. §112

Independent claim 8 and dependent claim 19 stand rejected under 35 U.S.C. §112. The examiner pointed out that “Claims 8 and 19 are written in an overall confusing manner, but specifically the phrase “taking out the operation” is indefinite.” (11/29/2005 Office Action at page 2).

Applicants respectfully traverse the rejection in light of the amendments made to Claims 8 and 19. Specifically, applicants respectfully submit that the amendments clarifying that an “operation executing section” is for when the determining section determines an operation condition is satisfied renders Claims 8 and 19 definite. In light of the clarifying amendments, it is respectfully requested that the rejection of claims 8 and 19 pursuant to 35 U.S.C. §112 be withdrawn.

Claim Rejections – 35 U.S.C. §102

I. Rejection of Claim 18 under 35 U.S.C. §102(e)

Claim 18 stands rejected under 35 U.S.C. §102(e) as anticipated by Herz. The rejection states that Herz discloses a terminal condition control method comprising both a condition information receiving step and a statistic processing step. (11/29/2005 Office Action at page 3).

Applicants respectfully traverse the Examiner's rejection in view of the amendment to Claim 18 submitted herewith and in view of MPEP §2131. MPEP §2131 states, in relevant part, that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 828, 831 (Fed. Cir. 1987). In light of the amendment to Claim 18, the Examiner has not shown the presence of a timing setting step either explicitly or inherently described in Herz. As a result, withdrawal of this ground of rejection is respectfully requested.

Claim Rejections – 35 U.S.C. §103

I. Rejection of Claims 1-5, 7-10, 12, 13 and 17 under 35 U.S.C. §103(a) over Chernock

Claims 1-5, 7-10, 12, 13 and 17 stand rejected under 35 U.S.C. §103(a) as obvious in light of Chernock. The rejection states that it would be obvious to one of ordinary skill in the art to note that all updates to terminals would be scheduled within a predetermined period. (11/29/05 Office Action at page 4).

Applicants respectfully traverse the Examiner's rejection in view of the amendments to the claims submitted herewith and as improper in view of MPEP §2143. MPEP §2143 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the

art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully point out that a *prima facie* case of obviousness has not been set forth because all limitations of the claims, as amended, are not taught or suggested by the Chernock reference.

First, Claim 1 has been substantially amended so as to claim “said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period.” The Examiner has not demonstrated how the Chernock reference teaches or suggests that the distribution of the informing timings can be changed by the instruction on the information timing from the center 21 to each of the terminals 22. Withdrawal of this ground of rejection is respectfully requested.

Second, Claim 2 depends from independent claim 1 and now includes a limitation directed to changing the distribution of the incoming timings by the instruction on the information timing from the center 21 to each of the terminals 22. The Examiner has not demonstrated how the Chernock reference teaches or suggests such a limitation. Withdrawal of this ground of rejection is respectfully requested.

Third, Claim 3 depends alternately from Claims 1 and 2 and now includes a limitation directed to changing the distribution of the incoming timings by the instruction on the information timing from the center 21 to each of the terminals 22. It is respectfully submitted that the portion of Chernock cited by the Examiner (“The control system will allow stations to request retransmission of blocks that have been corrupted (or not received).”)(emphasis added)

does not teach or suggest changing of the distribution of the incoming timings by the instruction of the center to each of the terminals. Withdrawal of this ground of rejection is respectfully requested.

Fourth, Claim 4 depends from Claim 2 and includes that claim's limitation directed to changing the distribution of the incoming timings by the instruction on the information timing from the center 21 to each of the terminals 22. It is respectfully submitted that Chernock does not teach or suggest this limitation directed to changing the distribution of the incoming timings. In addition, the portion of Chernock cited by the Examiner (column 5, lines 44-46) teaches targeting particular users that fit a particular demographic profile with particular data. It is respectfully submitted that Chernock does not teach or suggest distribution of condition informing timings to a uniform cross-section demographic. Rather, Chernock teaches targeting of a particular demographic. Withdrawal of these grounds of rejection is respectfully requested.

Fifth, Claim 5 has been amended so as to include a limitation directed to setting timings of transmitting conditions from the terminals to the communication controlling means by the communication controlling means themselves. It is respectfully submitted that Chernock does not teach or suggest this limitation directed to setting and/or changing the timings of transmitting conditions of the terminals. Withdrawal of this ground of rejection is respectfully requested.

Sixth, Claim 7 has been amended so as to include a limitation directed to setting timings of transmitting conditions from the terminals to the communication controlling means by the server apparatus. It is respectfully submitted that Chernock does not teach or suggest this limitation. Withdrawal of this ground of rejection is respectfully requested.

Seventh, Claims 8 and 9 depend from independent claim 7 and incorporate that claim's additional limitation directed to setting timings of transmitting conditions from the terminals to

the communication controlling means by the server apparatus. It is respectfully submitted that Chernock does not teach or suggest this limitation. Withdrawal of this ground of rejection is respectfully requested.

Lastly, claims 10, 12, 13, and 17 alternatively depend from independent claim 7 and dependent claim 8. In light of the amendments to claims 7 and 8 discussed above, it is respectfully submitted that Chernock does not teach or suggest the additional limitation directed to setting timings of transmitting conditions from the terminals to the communication controlling means by the server apparatus that is incorporated in claims 10, 12, 13, and 17. Withdrawal of these grounds for rejection is respectfully requested.

II. Rejection of Claim 6 under 35 U.S.C. §103(a) over Chernock in view of Reilly

Claim 6 stands rejected under 35 U.S.C. §103(a) as obvious over Chernock in view of Reilly. The rejection states that it would have been obvious for one of ordinary skill in the art to allow the terminals to set their own download times, as taught by Reilly, in the system disclosed in Chernock. (11/29/05 Office Action at page 9).

Applicants respectfully traverse the Examiner's rejection in view of the amendments to claim 6 submitted herewith and as improper in view of MPEP 2143. Applicants respectfully point out that a *prima facie* case of obviousness has not been set forth because all limitations of the claims, as amended, are not taught or suggested by the Chernock reference in view of Reilly. As previously noted, independent Claim 6 has been amended so as to claim a method of sending instruction from the server apparatus to the terminal so as to redistribute the informing timings of the transmission of data from the terminal to the server. It is respectfully submitted that Chernock in view of Reilly does not teach or suggest such a setting of distributions by the server.

Instead, Reilly (*see* col. 14, ll. 44-47) appears to teach or suggest a redistribution initiated by the terminals, not by the server. Withdrawal of this ground of rejection is respectfully requested.

III. Rejection of Claims 11, 15 and 16 under 35 U.S.C. §103(a) over Chernock in view of Herz

Claims 11, 15 and 16 stand rejected under 35 U.S.C. §103(a) as obvious over Chernock in view of Herz. The rejection states that it would have been obvious for one of ordinary skill in the art to modify the use the viewer's preferences as the conditional information, as taught by Herz, in the system disclosed by Chernock. (11/29/05 Office Action at page 10). Applicants respectfully traverse the Examiner's rejection in view of the amendments to claim 6 submitted herewith and as improper in view of MPEP §2143. Applicants respectfully point out that a *prima facie* case of obviousness has not been set forth because all limitations of the claims, as amended, are not taught or suggested by the Chernock reference in view of Herz. First, as noted above claim 11 depends alternatively from claims 7 and 8. In light of the amendments to claims 7 and 8 discussed above, it is respectfully submitted that Chernock does not teach or suggest the additional limitation directed to setting timings of transmitting conditions from the terminals to the communication controlling means by the server apparatus. Second, it is unclear how one of ordinary skill in the art would be motivated to calculate an audience rating based on the condition information in light of the disclosures of Chernock and Herz. Herz appears to be directed to predicting which video programming or data is most desirable to a customer based on the customer's preferences (*see* Herz at col. 4, ll. 27-30). However, it is unclear how Herz's teaching of downloading information specific to a user would teach the use of data indicating the number of viewers viewing the same program as claimed in Claim 11. Withdrawal of this ground of rejection is respectfully requested.

As to dependent claims 15 and 16, both claims 15 and 16 depend from claim 11. Accordingly, each of these claims incorporates the amendments to Claims 7 and 8 discussed above. In light of the amendments to claims 7 and 8 discussed above, it is respectfully submitted that Chernock in view of Herz do not teach or suggest the additional limitation directed to setting timings of transmitting conditions from the terminals to the communication controlling means by the server apparatus. Withdrawal of the grounds of rejection is respectfully requested.

IV. Rejection of Claim 14 under 35 U.S.C. §103(a) over Chernock in view of Casagrande

Claim 14 stands rejected under 35 U.S.C. §103(a) as obvious over Chernock in view of Casagrande. The rejection states that it would have been obvious for one of ordinary skill in the art to attempt the downloading for a fixed number of tries, as taught by Casagrande, before stopping the downloading until enough time had passed to try again, as disclosed by Chernock (11/29/05 Office Action at page 12). Applicants respectfully traverse the Examiner's rejection in view of the amendments to claim 7 submitted herewith and as improper in view of MPEP §2143. Applicants respectfully point out that a *prima facie* case of obviousness has not been set forth because all limitations of the claims, as amended, are not taught or suggested by the Chernock reference in view of Casagrande. Claim 14 depends from dependent claim 9, which itself depends from independent claim 7. In view of the amendment to Claim 7 discussed above, it is respectfully submitted that Chernock in view of Casagrande does not teach or suggest the additional limitation directed to setting timings of transmitting conditions from the terminals to the communication controlling means by the server apparatus. Withdrawal of this ground of rejection is respectfully requested.

V. Rejection of Claim 19 under 35 U.S.C. §103(a) over Herz in view of Chernock

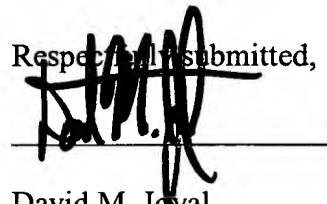
Finally, Claim 19 stands rejected under 35 U.S.C. §103(a) over Herz in view of Chernock. The rejection states that at the time of the invention it would have been obvious for one of obvious skill in the art to use the method of downloading software, as taught by Chernock, in the conditional system disclosed by Herz. (11/29/05 Office Action at page 14).

Applicants respectfully traverse the Examiner's rejection in view of the amendments to claim 18 submitted herewith and as improper in view of MPEP §2143. Applicants respectfully point out that a *prima facie* case of obviousness has not been set forth because all limitations of the claims, as amended, are not taught or suggested by the Chernock reference in view of Herz. Claim 19 depends on independent claim 18. Claim 18 has been amended so as to add a "timing setting step" limitation. In light of the amendment to claim 18, it is respectfully submitted that Chernock in view of Herz does not teach or suggest the "timing setting step" limitation of claim 19. Withdrawal of this ground of rejection is respectfully requested.

Claims 1-19 remain pending, and it is respectfully submitted that all of the presently pending claims are in immediate condition for allowance. The Examiner is respectfully requested to withdraw the rejections of the claims, to allow the claims, and to pass this application to early issue.

Fees for a two month extension of time is enclosed. Applicants do not believe that any other fees are due. However, if any additional fees are due, please charge such sums to our Deposit Account 50-1145.

Respectfully submitted,



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